

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

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|----------------------------------|---|--------------------------------------|
| CURTIS ROOKAIRD, |) | Case No. 2:14-CV-00176-RAJ |
| |) | |
| Plaintiff, |) | DEFENDANT BNSF RAILWAY |
| |) | COMPANY'S EMERGENCY |
| v. |) | MOTION FOR PROTECTIVE |
| |) | ORDER STRIKING THE AMENDED |
| BNSF RAILWAY COMPANY, a Delaware |) | 30(b)(6) NOTICE OF VIDEOTAPED |
| corporation, |) | DEPOSITION |
| |) | |
| Defendant. |) | NOTE ON MOTION CALENDAR: |
| |) | |
| |) | FRIDAY, APRIL 16, 2021 |

I. RELIEF REQUESTED

Pursuant to Fed. R. Civ. P. 26(c), Defendant BNSF Railway Company ("BNSF") moves for a protective order striking Plaintiff's 30(b)(6) Notice of Deposition. At the April 28, 2020 telephonic hearing regarding trial dates, this Court invited the parties to contact the in-court deputy for expedited resolution. Despite the unavailability of BNSF's Rule 30(b)(6) designee and an offer of alternative dates, Plaintiff is refusing to strike his unilaterally noticed deposition of BNSF set for April 8, 2021. BNSF therefore files this emergency motion pursuant to the Court's instructions given during the April 28, 2020 hearing.¹

II. RELEVANT BACKGROUND

After extensive pretrial discovery, this matter came before the Court for a jury trial in May 2016. The jury found in favor of Plaintiff and awarded him over \$1.2 million in damages,

¹ Goman Decl., Ex. A (excerpt of telephonic hearing transcript).
DEFENDANT BNSF'S EMERGENCY MFPO
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1 which was subsequently amended due to various post-trial rulings. BNSF appealed, and Plaintiff
 2 cross-appealed various aspects of the judgment. The Ninth Circuit vacated the District Court's
 3 judgment and remanded to this Court for further proceedings. The Ninth Circuit's mandate issued
 4 on November 30, 2018, giving immediate effect to its decision. Dkt. 311.

5 On February 14, 2020, Plaintiff first served BNSF with a notice of videotaped deposition
 6 of BNSF Rule 30(b)(6) corporate designee. Dkt. 341. BNSF served objections on February 21,
 7 2020. *Id.* On May 19, 2020, Plaintiff again served BNSF with a notice of videotaped deposition
 8 of BNSF Rule 30(b)(6) corporate designee, set for June 4-5, 2020, just over two weeks after the
 9 notice. *Id.* BNSF promptly served objections to Plaintiff's Notice of Deposition on May 26, 2020.
 10 *Id.* BNSF filed a motion for protective order, due to the fact that 3 of the 4 requested topics were
 11 outside the limited scope of remand. Dkt. 340.

12 On March 12, 2021, this Court issued an order granting in part BNSF's motion for
 13 protective order, agreeing with BNSF that three of the topics were outside the scope of remand,
 14 and narrowing the remaining topic² to post-May 2016 only. Dkt. 365. On March 26, 2021,
 15 Plaintiff served an amended notice of deposition for this remaining topic, unilaterally setting the
 16 deposition for April 8, 2021, just 13 days later. Goman Decl., Ex. B. BNSF's counsel
 17 immediately began discussing potential deponents and their availability. *Id.* at ¶ 3. An appropriate
 18 designee is not available on April 8, and Plaintiff refuses to reschedule despite offers of several
 19 other available dates less than two weeks later. *Id.* at ¶ 4-8. BNSF will of course comply with
 20 this Court's order of March 12 and agrees to produce a corporate designee on the remaining topic,
 21 but objects to the short time frame and Plaintiff's refusal to cooperate in finding an available date
 22 for all parties and BNSF's designee. This motion is therefore necessary.

23 **III. AUTHORITY AND ARGUMENT**

24 This Court has broad discretion to control discovery. *Redfin Corp. v. iPayOne.com, LLC*,
 25 No. C17-001217-RAJ, 2018 WL 1397482, at *2 (W.D. Wash. Mar. 20, 2018) (citing *Avila v.*

26
 27 ² The remaining topic seeks testimony on job ratings, data, and earnings for the jobs Plaintiff performed or
 someone with his seniority could have performed. Dkt. 365.

1 *Willits Env'tl. Remediation Trust*, 633 F.3d 828, 833 (9th Cir. 2011)). Although the general scope
 2 of discovery is broad, this Court has discretion “to limit discovery ‘for good cause... to protect a
 3 party or person from annoyance, embarrassment, oppression, or undue burden or expense...” *Id.*
 4 (quoting Fed. R. Civ. P. 26(c)(1)).

5 Under the federal rules, a party wishing to depose a person “must give reasonable written
 6 notice to every other party.” Fed. R. Civ. P. 30(b)(1). Here, only 13 days’ notice was given for
 7 this deposition. Goman Decl. Ex. B. This is not reasonable notice, nor did it even give BNSF
 8 enough time to obtain a protective order under the noting and briefing schedule for such motions
 9 under the local rules. *See, e.g., LMD Integrated Logistic Services, Inc. v. Mercer Distribution*
 10 *Services, LLC*, 2011 WL 1456145 at *3 (W.D. Wash April 14, 2011) (finding that a twelve day
 11 notice was too short of a time frame for an out of state defendant to file for and obtain a protective
 12 order and striking the notice of deposition). No appropriately knowledgeable deponent is available
 13 on the scheduled date. Nor has Plaintiff given a sound reason why the deposition must occur
 14 immediately, despite the fact that no new trial date has been set, nor why the offered dates, less
 15 than two weeks later, are unacceptable. BNSF requests that Plaintiff be required to reschedule
 16 the deposition to a *mutually agreeable* date.

17 **IV. CONCLUSION**

18 For the reasons above, BNSF respectfully requests a protective order striking Plaintiff’s
 19 Amended 30(b)(6) Notice of Deposition.

20 DATED: April 6, 2021

21 LANE POWELL PC

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